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DEPARTMENT OF COMMERCE

International Trade Administration

[C-475-819]

Certain Pasta from Italy: Final Results of the 2009 Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On August 8, 2011, the Department of Commerce (“Department”) published in the Federal Register its preliminary results of administrative review of the countervailing duty order on certain pasta from Italy for the period January 1, 2009, through December 31, 2009. Following the issuance of the preliminary results, Molino e Pastificio Tomasello S.p.A. (“Tomasello”) corrected its reported benefit amount for a subsidy program. We invited interested parties to comment on the preliminary results. Our analysis of Tomasello’s correction led to a change in the net subsidy rate. The final net rates for Tomasello; Pastificio Antonio Pallante S.r.L. (“Pallante”); F.lli De Cecco di Filippo Fara San Martino S.p.A. (“De Cecco”) and Pastificio Fabianelli S.p.A. (“Fabianelli”) are listed below in the section entitled “Final Results of Review.”

EFFECTIVE DATE: [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Mahnaz Khan or Christopher Siepmann, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-0914 and (202) 482-7958, respectively.

SUPPLEMENTARY INFORMATION:

Background

The following events have occurred since the publication of the preliminary results of this review. See Certain Pasta From Italy: Preliminary Results of the 14th (2009) Countervailing Duty Administrative Review, 76 FR 48130 (August 8, 2011) (“Preliminary Results”). We sent a supplemental questionnaire to Tomasello on August 12, 2011, and the Department received a response from Tomasello on September 8, 2011.

On September 29, 2011, we received a case brief from Tomasello. We did not receive rebuttal briefs.

Period of Review

The period of review for which we are measuring subsidies is January 1, 2009, through December 31, 2009.

Scope of the Order

Imports covered by the order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by the scope of the order is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of the order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the

appropriate certificate issued by the Istituto Mediterraneo Di Certificazione, Bioagricoop S.r.l., QC&I International Services, Ecocert Italia, Consorzio per il Controllo dei Prodotti Biologici, Associazione Italiana per l'Agricoltura Biologica, or Codex S.r.l. In addition, based on publicly available information, the Department has determined that, as of August 4, 2004, imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by Bioagricert S.r.l. are also excluded from the order. See Memorandum from Eric B. Greynolds to Melissa G. Skinner, dated August 4, 2004, which is on file in the Department's Central Records Unit ("CRU") in Room 7046 of the main Department building. In addition, based on publicly available information, the Department has determined that, as of March 13, 2003, imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by Istituto per la Certificazione Etica e Ambientale are also excluded from the order. See Memorandum from Audrey Twyman to Susan Kuhbach, dated February 28, 2006, entitled "Recognition of Istituto per la Certificazione Etica e Ambientale (ICEA) as a Public Authority for Certifying Organic Pasta from Italy" which is on file in the Department's CRU. Pursuant to the Department's May 12, 2011 changed circumstances review, effective January 1, 2009, gluten-free pasta is also excluded from the scope of the countervailing duty order. See Certain Pasta From Italy: Final Results of Countervailing Duty Changed Circumstances Review and Revocation, In Part, 76 FR 27634 (May 12, 2011).

The merchandise subject to review is currently classifiable under items 1901.90.90.95 and 1902.19.20 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Analysis of Comments Received

We have addressed all issues raised in Tomasello's case brief in the February 6, 2012 "Issues and Decision Memorandum for the Final Results in the 14th Administrative Review of the Countervailing Duty Order on Certain Pasta from Italy" from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration ("Decision Memorandum"), which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues raised by Tomasello, to which we have responded in the Decision Memorandum. The Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System ("IA ACCESS"). Access to IA ACCESS is available in the CRU. In addition, a complete version of the Decision Memorandum can be accessed directly on the internet at <http://www.trade.gov/ia/>. The signed Decision Memorandum and the electronic versions of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the information and comments received, we have revised the calculations with respect to the benefit amount calculated for Measure 3.14 for Tomasello. Further, we have determined that Measure 3.14, which was found regionally specific in the Preliminary Results, is instead specific on the basis of adverse facts available due to the Italian government's failure to provide de facto specificity information for this program. We have also determined that Tomasello did not receive any benefits under Regional Law 15/1993 during the

POR, and have modified our net subsidy rate accordingly. These changes are discussed in detail in the Decision Memorandum.

Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Tariff Act of 1930, as amended (“the Act”), provide that the Department shall apply “facts otherwise available” if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

In the Preliminary Results, we found grants under Measure 3.14 to be specific within the meaning of section 771(5A)(D)(iv) of the Act upon preliminarily determining that Government of Italy limits benefits under this program to companies in certain regions. See Preliminary Results, 76 FR at 48135-36. Upon reevaluation of Measure 3.14 for these final results, we find that the Government of Italy failed to respond to our request for usage information regarding this program. We requested this information twice, in supplemental questionnaires dated May 12, 2011, and June 17, 2011. As explained above, in cases where there is not enough information on the record for us to determine whether a program is specific (see section 776(a)(1) of the Act), and in cases where an interested party fails to provide information that has been requested by the

Department by the deadline for the submission of that information (see section 776(a)(2)(B) of the Act), we use facts otherwise available. Furthermore, an adverse inference is warranted under section 776(b) of the Act where a party fails to cooperate by not acting to the best of its ability to comply with a request for information from the Department. Because the Government of Italy failed to respond to our request for usage information regarding Measure 3.14, we find application of adverse facts available to be warranted. Therefore, we determine as adverse facts available that the assistance received by Tomasello under Measure 3.14 is specific. For a full discussion of this issue, see Decision Memorandum at “Analysis of Programs” and Comment 2.

Final Results of Review

In accordance with 19 CFR 351.221(b)(5), we calculated individual subsidy rates for the mandatory respondents, De Cecco, Fabianelli, Pallante, and Tomasello. For the period January 1, 2009, through December 31, 2009, we find that the ad valorem net subsidy rates for the producers/exporters under review are as follows:

Producer/Exporter	Net Subsidy Rate
F.lli De Cecco di Filippo Fara San Martino S.p.A.	0.39% (<u>de minimis</u>)
Pastificio Fabianelli S.p.A	0.00%
Molino e Pastificio Tomasello S.p.A	5.11%
Pastificio Antonio Pallante, S.r.L	1.00%

Assessment Rates

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (“CBP”) fifteen days after the date of publication of these final results. Because the net subsidy rates for De Cecco and Fabianelli are less than 0.5 percent and, thus, de minimis, the Department will instruct CBP to liquidate shipments of certain pasta by De Cecco and Fabianelli entered or withdrawn from warehouse, for consumption, from January 1, 2009, through December 31, 2009, without regard to countervailing duties, in accordance with 19 CFR 351.106(c). For Pallante and Tomasello, the Department will instruct CBP to assess countervailing duties at the net subsidy rate listed above.

For all other companies that were not reviewed (except Barilla G. e R. F.lli S.p.A., and Gruppo Agricoltura Sana S.r.l., which are excluded from the order, and Pasta Lensi S.r.l., which was revoked from the order), the Department has directed CBP to assess countervailing duties on all entries between January 1, 2009, and December 31, 2009, at the rates in effect at the time of entry.

Cash Deposit Instructions

Since the countervailable subsidy rate for De Cecco and Fabianelli is de minimis or zero, the Department will instruct CBP to continue to suspend liquidation of entries, but to collect no cash deposits of estimated countervailing duties for De Cecco and Fabianelli on all shipments of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For Tomasello and Pallante, the Department intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown above.

For all non-reviewed firms (except Barilla G. e R. F.lli S.p.A. and Gruppo Agricoltura Sana S.r.l., which are excluded from the order, and Pasta Lensi S.r.l. which was revoked from the order), we will instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Order

This notice serves as a reminder to parties subject to administrative protective order (“APO”) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Paul Piquado
Assistant Secretary
for Import Administration

February 6, 2012
Date

Appendix:

Comment 1: Whether the Department impeded the proceeding

Comment 2: Whether the Department failed to differentiate between national government programs and regional government programs

Comment 3: Whether the Department should have countervailed the entire benefit from Law 46/1982, Article 14 (Fondo Innovazione Tecnologica)

Comment 4: Whether the Department should have found Article 280 of Law 296/2006 and Article 23 of Legislative Decree 38/2000 to be specific

[FR Doc. 2012-3180 Filed 02/09/2012 at 8:45 am; Publication Date: 02/10/2012]